the record in such manner as the Administrative Law Judge deems appropriate. If respondent answers and demands an oral hearing, the Administrative Law Judge, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) The Administrative Law Judge may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Administrative Law Judge the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Administrative Law Judge. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

[61 FR 48833, Sept. 17, 1996]

§ 128.9 Proceedings before and report of Administrative Law Judge.

(a) The Administrative Law Judge may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other administrative or other proceeding involving the same respondent.

(b) The Administrative Law Judge, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Administrative Law Judge's recommendations. It shall be transmitted to the Assistant Secretary for Political-Military Affairs, Department of State.

[61 FR 48833, Sept. 17, 1996]

§ 128.10 Disposition of proceedings.

Where the evidence is not sufficient to support the charges, the Managing Director, Directorate of Defense Trade Controls or the Administrative Law Judge will dismiss the charges. Where the Administrative Law Judge finds that a violation has been committed,

the Administrative Law Judge's recommendation shall be advisory only. The Assistant Secretary of State for Political-Military Affairs will review the record, consider the report of the Administrative Law Judge, and make an appropriate disposition of the case. The Managing Director may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.7 of this subchapter, impose a civil penalty as provided in § 127.10 of this subchapter, or take such action as the Administrative Law Judge may recommend. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Administrative Law Judge's report will be served upon the respondent.

[71 FR 20552, Apr. 21, 2006]

§ 128.11 Consent agreements.

(a) The Directorate of Defense Trade Controls and the respondent may, by agreement, submit to the Administrative Law Judge a proposal for the issuance of a consent order. The Administrative Law Judge will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Administrative Law Judge does not approve the proposal, the Administrative Law Judge will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Administrative Law Judge will report the facts of the case along with recommendations to the Assistant Secretary of State for Political-Military Affairs. If the Assistant Secretary of State for Political-Military Affairs does not approve the proposal, the case will proceed as though no consent proposal had been made. If the Assistant Secretary of State for Political-Military Affairs approves the proposal, an appropriate order may be issued.

(b) Cases may also be settled prior to service of a charging letter. In such an event, a proposed charging letter shall be prepared, and a consent agreement